



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092  
(916) 445-1441 • FAX (916) 322-7175  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

December 2, 2011

Dear Interested Party:

KRISTINE CAZADD  
Executive Director

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the December 14, 2011 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*.

Action 1 on the Agenda concerns whether Regulation 1685.5 should be amended to update the methodology by which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and make such amounts available to the Franchise Tax Board in the form of a use tax table for calendar year 2012 and subsequent years.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on December 14, 2011** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director  
Sales and Use Tax Department

JLM: rsw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (MIC 78)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

E-file now, find out how . . . [www.boe.ca.gov](http://www.boe.ca.gov)



(Via E-mail)

Mr. Robert Thomas, Board Member's Office, Fourth District

Mr. Neil Shah, Board Member's Office, Third District

Mr. Tim Treichelt, Board Member's Office, Third District

Mr. Alan LoFaso, Board Member's Office, First District

Ms. Mengjun He, Board Member's Office, First District

Ms. Yvette Stowers, Board Member's Office, First District

Mr. James Kuhl, Board Member's Office, Second District

Mr. Lee Williams, Board Member's Office, Second District

Ms. Natasha Ralston Ratcliff, State Controller's Office

Ms. Kristine Cazadd

Mr. Randy Ferris

Mr. Bradley Heller

Mr. Robert Tucker

Ms. Susanne Buehler

Ms. Leila Hellmuth

Mr. Robert Wilke

Ms. Lynn Whitaker

**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

<p><b>Action 1 – Proposed amendments to Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table</b></p> <p>Issue Paper Alternative 1 – Staff Recommendation</p> <p>See Agenda, pages 2 – 7, and Issue Paper Exhibit 2.</p>	<p><b>Alternative 1</b></p> <p>Approve and authorize publication of staff’s proposed amendments to update the methodology by which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and make such amounts available to the Franchise Tax Board in the form of a use tax table for calendar year 2012 and subsequent years.</p> <p style="text-align: center;"><b>OR</b></p> <p><b>Alternative 2</b></p> <p>Do not approve proposed amendments.</p>
<p>Issue Paper Alternative 2 – Do not amend Regulation 1685.5.</p>	

**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, *Calculation of Estimated Use Tax –Use Tax Table***

<b>Action 1 – Staff Recommendation</b>	<p><b>(a) IN GENERAL.</b></p> <p><u>(1) ESTIMATED USE TAX AND USE TAX TABLE.</u> The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.</p> <p><u>(2) WHO IS ELIGIBLE TO USE BOE USE TAX TABLES.</u></p> <p><u>(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.</u></p> <p><u>(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.</u></p> <p><u>(3) SAFE HARBOR. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.</u></p>
--	---

**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table**

<b>Action 1 – Staff Recommendation</b>	<p><b>(b) DEFINITIONS AND DATA SOURCES.</b></p> <p>(1) AGI RANGES. The use tax table shall be separated into <u>fifteen (15)</u><del>eight (8)</del> AGI ranges as follows:</p> <p><del>(A) AGI less than \$20,000;</del> <del>(B) AGI of \$20,000 to \$39,999;</del> <del>(C) AGI of \$40,000 to \$59,999;</del> <del>(D) AGI of \$60,000 to \$79,999;</del> <del>(E) AGI of \$80,000 to \$99,999;</del> <del>(F) AGI of \$100,000 to \$149,999;</del> <del>(G) AGI of \$150,000 to \$199,999;</del> <del>(H) AGI more than \$199,999.</del></p> <p><u>(A) AGI less than \$10,000;</u> <u>(B) AGI of \$10,000 to \$19,999;</u> <u>(C) AGI of \$20,000 to \$29,999;</u> <u>(D) AGI of \$30,000 to \$39,999;</u> <u>(E) AGI of \$40,000 to \$49,999;</u> <u>(F) AGI of \$50,000 to \$59,999;</u> <u>(G) AGI of \$60,000 to \$69,999;</u> <u>(H) AGI of \$70,000 to \$79,999;</u> <u>(I) AGI of \$80,000 to \$89,999;</u> <u>(J) AGI of \$90,000 to \$99,999;</u> <u>(K) AGI of \$100,000 to \$124,999;</u> <u>(L) AGI of \$125,000 to \$149,999;</u> <u>(M) AGI of \$150,000 to \$174,999;</u> <u>(N) AGI of \$175,000 to \$199,999;</u> <u>(O) AGI more than \$199,999</u></p>
--	--

**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table**

<p><b>Action 1 – Staff Recommendation</b></p>	<p>(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On June<del>May</del> 1, 2012, and each June<del>May</del> 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on <u>taxable electronic and mail order purchases</u> for the <u>preceding</u><del>proceeding</del> calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.</p> <p>(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.</p> <p>(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.</p> <p><u>(5) TOTAL SPENDING ON TAXABLE PURCHASES. Total spending on taxable purchases shall be determined by:</u></p> <p><u>(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:</u></p> <ul style="list-style-type: none"> <li><u>(i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;</u></li> <li><u>(ii) Prescriptions;</u></li> <li><u>(iii) Video Content Downloads;</u></li> <li><u>(iv) Audio Content Downloads;</u></li> <li><u>(v) Prepackaged computer software, including software downloads; and</u></li> <li><u>(vi) All nonmerchandise receipts.</u></li> </ul> <p><u>(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and</u></p>
---	---

**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, *Calculation of Estimated Use Tax –Use Tax Table***

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

(6)(5) PERCENTAGE OF INCOME SPENT ON TAXABLEELECTRONIC AND MAIL ORDER PURCHASES. The percentage of income spent on taxableelectronic and mail order purchases during a calendar year shall be calculated by dividing the total spending on taxable purchasesat electronic shopping and mail order houses for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

(7)(6) AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE. The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, Calculation of Estimated Use Tax –Use Tax Table**

**(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY.**

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying ~~\$5,000~~~~\$10,000~~ by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through ~~(N)(G)~~ shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(~~OH~~) shall be determined by multiplying each range members actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

**(d) USE TAX TABLE FORMAT.**

(1) The use tax table for calendar year 2011 shall provide as follows:

<b>Adjusted Gross Income (AGI) Range</b>	<b>Use Tax Liability</b>
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999 -Multiply AGI by 0.070% (.0007)	



**AGENDA — December 14, 2011 Business Taxes Committee Meeting**  
**Regulation 1685.5, *Calculation of Estimated Use Tax –Use Tax Table***

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as follows:~~the use tax table for calendar year 2011.~~

<u><b>Adjusted Gross Income</b></u> <u><b>(AGI) Range</b></u>		<u><b>Use Tax Liability</b></u>
<u>Less Than \$10,000</u>		<u>\$</u>
<u>\$10,000</u>	<u>to</u> <u>\$19,999</u>	<u>\$</u>
<u>\$20,000</u>	<u>to</u> <u>\$29,999</u>	<u>\$</u>
<u>\$30,000</u>	<u>to</u> <u>\$39,999</u>	<u>\$</u>
<u>\$40,000</u>	<u>to</u> <u>\$49,999</u>	<u>\$</u>
<u>\$50,000</u>	<u>to</u> <u>\$59,999</u>	<u>\$</u>
<u>\$60,000</u>	<u>to</u> <u>\$69,999</u>	<u>\$</u>
<u>\$70,000</u>	<u>to</u> <u>\$79,999</u>	<u>\$</u>
<u>\$80,000</u>	<u>to</u> <u>\$89,999</u>	<u>\$</u>
<u>\$90,000</u>	<u>to</u> <u>\$99,999</u>	<u>\$</u>
<u>\$100,000</u>	<u>to</u> <u>\$124,999</u>	<u>\$</u>
<u>\$125,000</u>	<u>to</u> <u>\$149,000</u>	<u>\$</u>
<u>\$150,000</u>	<u>to</u> <u>\$174,999</u>	<u>\$</u>
<u>\$175,000</u>	<u>to</u> <u>\$199,999</u>	<u>\$</u>
<u>More than \$199,999 -Multiply AGI by</u> <u>% (.000 )</u>		

Issue Paper Number **11-006**



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

---

## **Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table**

### **I. Issue**

Whether it is necessary to amend Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB) in the form of a use tax table for calendar year 2012 and subsequent years.

### **II. Alternative 1 - Staff Recommendation**

Staff recommends that the Board approve and authorize publication of proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*. The proposed amendments:

- Clarify the persons who are eligible to use the use tax table to report their use tax obligations and for what type of purchases – new subdivision (a)(2);
- Explain the “safe harbor” provision (described below) – new subdivision (a)(3);
- Increase the number of adjusted gross income ranges to a total of fifteen (15) – amended subdivision (b)(1);
- Modify the intervals of the established AGI ranges – amended subdivision (b)(1);
- Change the use tax liability factor calculation date from May 1 to June 1 each year – amended subdivision (b)(2);
- Require an adjustment to the U.S. Spending at Electronic Shopping and Mail Order Houses data, published by the U.S. Census Bureau, to estimate taxable purchases of tangible personal property – new subdivision (b)(5); and
- Provide the format of the use tax table for calendar year 2012 and subsequent years – amended subdivision (d)(2).

The full text of the proposed amendments to Regulation 1685.5 under this alternative is included in Exhibit 2 (attached).

### **III. Other Alternative Considered**

Do not amend Regulation 1685.5.

## **IV. Background**

Section 6452.1 of the Revenue and Taxation Code (RTC), as amended by Senate Bill No. 86 (Stats. 2011, ch. 14) approved by the Governor on March 24, 2011, requires the Board to annually calculate the estimated amount of use tax due according to a person's AGI and, by July 30 of each calendar year, make available to the Franchise Tax Board (FTB) such amounts in the form of a use tax table for inclusion in the instructions to the FTB's income tax returns. Section 6452.1 also gives eligible consumers the option to satisfy their use tax obligations with regard to their nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000) by reporting their estimated amount of use tax as calculated by the Board on their California income tax returns. Furthermore, section 6452.1 includes a "safe harbor" provision that precludes the Board from assessing the difference between a consumer's reported estimated use tax liability based on the Board's use tax table and the consumer's actual use tax liability, for eligible nonbusiness purchases, provided the consumer uses the table correctly.

The Board adopted Regulation 1685.5 on July 26, 2011. The regulation was approved by the Office of Administrative Law (OAL) on August 16, 2011, and became effective on September 15, 2011. The Board was unable to hold interested parties meetings to discuss Regulation 1685.5 prior to beginning the formal rulemaking process given the statutory requirement that the Board provide the 2011 use tax table to the FTB by July 30, 2011, and other practical deadlines. However, the Board directed staff to meet with interested parties to discuss whether Regulation 1685.5 needs to be amended before the Board is required to estimate consumers' use tax liabilities and prepare a use tax table for 2012. Staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether to amend Regulation 1685.5. The Business Taxes Committee is scheduled to discuss this issue at the December 14, 2011, committee meeting.

## **V. Discussion**

The use tax law has been in existence since 1935. California's use tax generally applies to the storage, use, or other consumption of tangible personal property in California that was purchased from an out-of-state retailer. (RTC § 6201.) California's use tax is intended to eliminate the incentive for California consumers to purchase tangible personal property from out-of-state retailers in order to avoid paying the sales tax that would apply if the property were sold in California.

California's use tax is imposed on consumers. (RTC § 6202.) However, out-of-state retailers that are engaged in business in California must register with the Board and collect any applicable use tax from their California customers. (Regulation 1684.) Furthermore, consumers may satisfy their use tax liabilities by paying applicable use taxes to retailers that are registered with the Board and retaining receipts showing that they paid the taxes. Otherwise, consumers are required to report and pay their own use tax liabilities. (Regulation 1685.)

California consumers that do not maintain complete records of their purchases of tangible personal property throughout the year may have difficulty determining how much they spent on purchases of tangible personal property from out-of-state retailers, and whether they paid use tax to the out-of-state retailers when they made their purchases. In addition, some consumers may have difficulty determining the cumulative rate of state, local, and district use tax applicable to their purchases of tangible personal property. The optional use tax table prescribed by Regulation 1685.5 is intended to make it more convenient for eligible consumers to comply with their use tax reporting obligations by eliminating the need for each consumer to maintain records regarding eligible nonbusiness purchases, the need for each consumer to determine his or her own cumulative state, local, and district use tax rate, and the need for

each consumer to calculate his or her actual use tax liability. Eligible consumers include consumers with taxable nonbusiness purchases of individual items of tangible personal property with a sales price of less than \$1,000.

With respect to the allocation of total use tax paid, the amounts received from the use tax line on the FTB returns will continue to be allocated according to the taxpayer's address as reported to the FTB. Local taxes will be allocated to the countywide pools and applicable district taxes will be allocated based on the countywide pools, with consideration given as to whether the taxpayer's address is within a city that imposes a district tax. The balance is then allocated to the statewide components of the use tax rate.

### Methodology in the Current Regulation

Regulation 1685.5 prescribes a methodology for estimating consumers' use tax liabilities based upon their AGI ranges using a "use tax liability factor" determined by:

1. Multiplying the percentage of total personal income spent on electronic and mail order house purchases for the preceding calendar year, as determined from data provided by the United States Bureau of Economic Analysis and the United States Census Bureau, by 37 percent (0.37), which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers; and
2. Multiplying the product by the weighted average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

The Board determined that this methodology provides a reasonably accurate estimate of California consumers' use tax liabilities based upon the assumptions that California consumers spend an average percentage of their incomes on electronic and mail order purchases and that an average percentage of their total purchases of tangible personal property for use in California are from unregistered out-of-state retailers. The Board recognized that a particular consumer's actual use tax liability may be higher or lower than the consumer's estimated use tax liability as determined using the methodology in the regulation; however, that would be the case with any reasonable estimate. Furthermore, the Board noted that consumers always have the option to report their actual use tax liabilities, and consumers may continue to report their actual use tax liabilities whenever their actual use tax liabilities are lower than their estimated use tax liabilities.

The format of the use tax table prescribed by Regulation 1685.5 allows the majority of consumers to find their AGI within an established AGI range and read across to the right column to find their estimated use tax liabilities. However, consumers with AGIs over \$199,999 are required to multiply their actual AGIs by the use tax liability factor specified for their AGI range to determine their estimated use tax liabilities. Therefore, the use tax table eliminates the need for consumers preparing California personal income tax returns reporting AGIs that are \$199,999 or less, regardless of filing status (i.e., single, married, filing jointly, etc.), to perform any mathematical calculations to estimate, report, and pay their eligible use tax liabilities,<sup>1</sup> and greatly simplifies the calculations that consumers with AGIs over \$199,999 are required to make to calculate, report, and pay their eligible use tax liabilities. Furthermore, the format of the use tax table prescribed by Regulation 1685.5 completely eliminates the need for all eligible consumers to

---

<sup>1</sup> Data provided by the FTB indicates that 96 percent of California personal income tax returns filed for taxable year 2008, the most recent year for which data is available, reported AGIs of \$200,000 or less. Therefore, staff believes that the current format of the Board's use tax tables eliminates the need for approximately 96 percent of California consumers who purchased tangible personal property for use in California from unregistered out-of-state retailer to perform additional calculations to estimate their own use tax liabilities.

refer to any external sources for additional information, such as the use tax rate, in order to estimate, report, and pay their eligible use tax liabilities.

The AGI ranges used in the use tax table prescribed by Regulation 1685.5 are based on AGI ranges provided by the FTB and there are similar percentages of California taxpayers in each of the eight AGI ranges. Staff understands that nine other states have use tax tables. Of those nine states, three states have more AGI ranges (Maine-11, Oklahoma-31, and North Carolina-31) than California, three states have fewer AGI ranges (Kansas-6, Massachusetts-6, and Vermont-7) than California, and three have the same number of AGI ranges (Michigan, New York and New Jersey) as California (8).

#### Assembly Bill No. 155

Assembly Bill No. (AB) 155 expanded the use tax registration requirements so that they apply to some out-of-state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and Board staff is currently unable to determine the extent to which the new registration requirements will reduce the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers after the new requirements are operative. Therefore, staff is not recommending that the Board amend Regulation 1685.5 to adjust for the new registration requirements imposed by AB 155 at this time, but staff will continue to monitor the implementation of AB 155 and may recommend additional amendments when sufficient data is available.

#### Interested Parties Submissions

The California Taxpayers Association (CalTax) submitted written comments in response to the First Discussion Paper. In response to CalTax's comments, Board staff is recommending that the Board amend Regulation 1685.5 to increase the number of AGI ranges and reduce the number of consumers in each AGI range so that consumers' estimated use tax liabilities increase/decrease by lesser amounts between AGI ranges. Board staff is also recommending that the Board amend the regulation so that the methodology for estimating consumers' use tax liabilities is based upon the percentage of consumers' personal income spent on "taxable" purchases from electronic and mail order houses, rather than all spending at electronic and mail order shopping houses. (CalTax's comments and staff's responses are discussed more fully in the discussion of alternative 1 below.)

CalTax did not submit written comments following the Second Discussion Paper and second meeting with interested parties. However, Mr. Lee Williams of Senator Runner's Office submitted written comments for the Board's consideration, which are included as Exhibit 3 (attached). Mr. Williams' comments are summarized and responded to below.

#### *Comment 1*

Mr. Williams suggests that the regulation and instructions to the FTB income tax return should contain a general explanation of the difference between a line item amount and a transaction total and provide examples as well. The comment further suggests that the regulation and FTB instructions explain that "items of tangible personal property each with a sales price of less than one thousand (\$1,000)," as stated in proposed subdivision (a)(2), is referring to the line item amount and not the transaction total.

Staff does not believe that the difference between a line item amount and a transaction total needs to be prescribed by regulation. Staff agrees that it would be helpful to explain the difference between line item amounts and transaction totals to consumers estimating their use tax liabilities. However, staff is somewhat concerned that the examples recommended by Mr. Williams may confuse taxpayers by implying that there is some record keeping requirement for eligible nonbusiness purchases reported

pursuant to the Board's use tax table, even though the use tax table is intended to assist those consumers who may not have complete records. Also, staff is of the opinion that consumers will most likely refer to the instructions that accompany their FTB income tax returns for guidance or clarification regarding the difference between line item amounts and transaction totals when reporting their use tax liabilities, rather than Regulation 1685.5. Therefore, staff has not recommended any amendments to Regulation 1685.5 in response to this suggestion. However, Board staff will include an explanation of the difference between line item amounts and transaction totals in the estimated use tax table instructions for 2012 and subsequent years. In addition, staff has no objection to including the examples in the instructions if the Board determines that the examples will help consumers estimate their use tax liabilities without creating any undue confusion and directs staff to include the examples.

#### *Comment 2*

Mr. Williams suggests the "Total Spending on Taxable Purchases," as provided in proposed subdivision (b)(5), should be reduced by 1.817 percent to account for the portion of transactions that involve individual items with a sales price of \$1,000 or more. Mr. Williams' suggested reduction of 1.817 percent is based on his analysis of line item data included in the summary audit transaction data for two large national retailers. Mr. Williams acknowledges that the adjustment is not sufficient to change an example calculation of the use tax liability factor that was discussed during the second interested parties meeting, but he is of the opinion an adjustment should be made in the interest of accuracy and eliminating perceived bias. Mr. Williams also suggests that his reduction of 1.817 percent could be improved with more empirical data.

Mr. Williams' suggestion to reduce total spending on taxable purchases by 1.817 percent is based upon limited data from two unidentified companies and the assumptions that: (A) the two companies' data is representative of 99.5 percent of all electronic shopping and mail order house retailers; and (B) half of the spending at the other 0.5 percent of electronic shopping and mail order house retailers is attributable to individual items with a sales price of \$1000 or more. Staff performed research to determine whether there is some reasonably reliable way to adjust the methodology for estimating consumers' use tax liabilities in Regulation 1685.5 to account for the portion of transactions that involve individual items with a sales price of \$1,000 or more. However, staff is not aware of any publicly available data sources for the composition of individual purchase transactions from Internet or mail order companies that could be used to isolate the percentage of spending on individual items of tangible personal property each with a sales price of \$1000 or more that could be used to verify or improve Mr. Williams' suggested reduction of 1.817 percent.

The best publicly available data source that staff has found is *The 2011 Internet Retailer Top 500 Guide* (Vertical Web Media LLC, Chicago, Illinois, online version), which has data on average ticket purchases (transaction totals) for 2010. Staff analyzed this data, and found that:

- Eight of the 500 companies had average ticket purchases of \$1,000 or more and were located outside of California (their retail industries were jewelry, furniture, fitness equipment, and coin dealers);
- These eight companies accounted for less than one-half of one percent of total sales made by the *Internet Retailer Top 500* companies; and
- There was no data to determine what portion of the eight companies' sales tickets contained purchases of single items with a sales price of \$1,000 or more, rather than purchases of multiple items, each with a sales price of less than \$1,000, but with a total ticket price of \$1,000 or more.

Staff also considered whether it was feasible to use data compiled from retailers' sales and use tax returns, audits, etc., to adjust the methodology for estimating consumers' use tax liabilities in Regulation 1685.5 to account for the portion of transactions that involve individual items with a sales price of

\$1,000 or more. Staff found that retailers' sales and use tax returns do not contain sufficient detail and the only likely internal source of such detailed information would be the invoices or sales transactions data reviewed in retailers' audits. However, the records reviewed in retailers' audits are confidential. Furthermore, there is no guarantee that such audit data would be available from a representative sample of electronic shopping and mail order house retailers from year-to-year and that such retailers would have line item data that would distinguish between sales made through websites and traditional brick and mortar locations in California.

Staff also noted that Mr. Williams comment appears to indicate to staff that he thinks the 1.817 percent adjustment should be made to "Total Spending on Taxable Purchases" (as calculated under new subdivision (b)(5), which staff recommends adding to Regulation 1685.5). However, staff is of the opinion that any adjustment should be applied to the "Total Spending at Electronic Shopping and Mail Order Houses," after that amount is increased by \$10,000,000,000 to account for spending that is not included in the spending data published by the United States Census Bureau (as provided in subdivision (b)(5)(B), which staff recommends adding to Regulation 1685.5), and prior to adjusting for the nontaxable categories (listed in subdivision (b)(5)(A), which staff recommends adding to Regulation 1685.5). To do otherwise would imply that all purchases of \$1,000 or more are of items that would be subject to tax.

Lastly, staff has determined that the suggested reduction (1.817%) does not affect the estimated use tax liabilities in the example calculation (Exhibit 4) and would not do so even if the percentage adjustment were increased to 4.0 percent. For these reasons, staff does not believe the regulation can be reliably amended to account for the portion of transactions that involve individual items with a sales price of \$1,000 or more, and the suggestion to make a 1.817 percent adjustment is not incorporated into the proposed amendments to the regulation. However, if the Board determines that Mr. Williams' estimate is sufficiently reliable, then staff has no objection to making Mr. Williams' 1.817 percent adjustment to "Total Spending at Electronic Shopping and Mail Order Houses," after that amount is increased by \$10,000,000,000 to account for spending that is not included in the spending data published by the United States Census Bureau, and prior to adjusting for the nontaxable categories.

### *Comment 3*

As discussed in the interested parties process, it is possible for taxpayers to receive income from multiple lines of businesses, including a sole proprietorship, partnership, S-corporation, and farming activities. Some of these businesses may be required to register with the BOE (such as a qualified purchaser, or retailers making sales of items subject to tax). Mr. Williams explains that it appears to him that the current methodology for estimating a person's estimated use tax liability based on the person's AGI does not recognize use tax paid under these other programs and thus the use tax estimate is overstated. Mr. Williams suggests the AGI received from entities that have already reported tax be excluded from the person's AGI when determining their estimated use tax liabilities. Alternatively, Mr. Williams suggests a credit for tax paid under other BOE programs could be applied to the estimated use tax liability as calculated in the use tax table.

Staff acknowledges that a person may receive income from a variety of businesses, including those registered with the BOE and reporting tax under the accounts for which they are registered. However, staff understands that taxable purchases made by registered businesses, including sole proprietorships, partnerships, limited liability companies, and corporations, should be reported under the accounts for which those businesses are registered and taxable purchases made by businesses that are not registered with the BOE may either be reported directly to the Board or on the businesses' income tax returns on an actual basis. Staff further understands that the use tax table is an option available for consumers to report tax on their nonbusiness purchases of items each with a sales price of less than \$1,000 (i.e., their personal

purchases). In addition, staff understands that the methodology used to develop the use tax table is based upon personal income data and all of the income included in an individual's AGI is generally available for use by that individual's household to make nonbusiness purchases of tangible personal property from unregistered out-of-state retailers, regardless of its source.

Therefore, staff does not believe that the methodology used to develop the use tax table will lead consumers to report estimated use tax on purchases made by businesses from which they receive income and staff does not believe that Regulation 1685.5 needs to be amended to prescribe adjustments to consumers' AGI. But, staff does recommend that the amendments adding subdivision (a)(2)(B) to Regulation 1685.5 further clarify that "The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE," as shown in Exhibit 2, to ensure that business purchases are not reported twice.

## **VI. Alternative 1 - Staff Recommendation**

Staff recommends the Board approve and authorize publication of proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, as illustrated in Exhibit 2.

### **A. Description of Alternative 1**

#### Clarifying Language (subdivision (a)(2) and (a)(3))

Regulation 1685.5 currently prescribes the methodology by which the Board shall annually calculate a person's estimated use tax liability according to their AGI and the format of the use tax table for calendar year 2011. The regulation does not provide guidance with respect to who may use the table and does not specify the type of purchases that may be reported using the use tax table. Staff recommends adding subdivision (a)(2) to clarify that the table is for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000.

Furthermore, staff recommends adding subdivision (a)(3) to provide assurance that if eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

#### AGI Ranges (subdivision (b)(1)(A)-(O))

During the interested parties process, representatives from CalTax expressed concern that the current AGI range intervals in the Board's use tax tables are too broad and that the tables should include many more AGI ranges. As explained above, staff understands that three of the nine states with use tax tables have use tax tables that employ more AGI ranges than California. Staff understands that the number of AGI ranges and the intervals of such ranges can affect a particular taxpayer's estimated use tax liability. Staff understands that establishing additional AGI ranges with narrower intervals will increase the probability that a taxpayer's estimated use tax liability determined using the Board's use tax tables will be closer to that taxpayer's estimated use tax liability determined by multiplying the taxpayer's actual AGI by the Board's use tax liability factor. In addition, increased AGI ranges will result in tables that have estimated use tax liabilities that increase/decrease by lesser amounts between AGI ranges.

Therefore, staff recommends amending Regulation 1685.5 so as to nearly double (increase from 8 to 15) the number of AGI ranges in the Board's use tax tables. Specifically, staff recommends using AGI range intervals of \$10,000 (rather than \$20,000) up to an AGI of \$99,999. In addition, staff recommends



establishing additional AGI ranges for AGI ranges between \$100,000 and \$199,000 with intervals of \$25,000 (rather than \$50,000). The highest AGI range will continue to be AGI of more than \$199,999 and taxpayers in this range will continue to be required to calculate their estimated use tax liabilities by multiplying their actual AGIs by the use tax liability factor. Although taxpayers in the highest range are required to perform an additional step to calculate their use tax liabilities, staff estimates the number of taxpayers within the highest range is approximately 4 percent, and staff believes this format provides a simple table for the majority of taxpayers. (See new table format recommended to be added to Regulation 1685.5, subd. (d)(2) in Exhibit 2.)

#### Use Tax Liability Factor Calculation Date (subdivision (b)(2))

Regulation 1685.5, subdivision (b)(2) currently requires the Board to calculate the use tax liability factor for calendar year 2012 using the most current data available on May 1, 2012, and to calculate the use tax liability factors for subsequent years using the most current data available on May 1 of those subsequent years. However, the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year. Therefore, staff recommends amending subdivision (b)(2) to change the use tax liability factor calculation date from May 1 to June 1 of each year so that Board will use the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years.

#### U.S. Spending at Electronic Shopping and Mail Order Houses (subdivision (b)(5))

##### *Adjustment for Purchases from Retailers not within the Electronic Shopping Category of Business*

As explained above, one component of the calculation of the estimated use tax is the total amount of U.S. Spending at Electronic Shopping and Mail Order Houses, obtained from the U.S. Census Bureau. Staff determined that the U.S. Census Bureau's calculation of U.S. Spending at Electronic Shopping and Mail Order Houses does not include all purchases of tangible personal property from unregistered out-of-state retailers for use in California, and estimated that this category of U.S. Census Bureau data failed to account for approximately \$10 billion of total taxable and nontaxable purchases from electronics and appliance stores, building materials and garden equipment and supplies stores, food and beverage stores, health and personal care stores, clothing and clothing accessories stores, sporting goods, hobby, book, and music stores, general merchandise stores, and other miscellaneous stores (Source: U.S. Census Bureau, 2009 Annual Retail Trade Survey). (See Exhibit 5.) This would include items purchased from websites operated by retailers who do not fall within the electronic shopping category of business. Therefore, staff recommends that the Board amend Regulation 1685.5 to require that \$10 billion be added to the U.S. Spending at Electronic Shopping and Mail Order Houses data, obtained from the U.S. Census Bureau.

##### *Adjustment to Estimate Taxable Purchases*

During the interested parties process, questions were raised as to whether the U.S. Spending at Electronic Shopping and Mail Order Houses data included nontaxable purchases. Staff examined the data obtained from the U.S. Census Bureau and *Retail Trade: Subject Series: Product Lines: Product Lines Statistics by Kind of Business for the United States: 2007* (See Exhibit 6) and determined that the following categories of items included in the U.S. Census Bureau's total U.S. Spending at Electronic Shopping and Mail Order Houses data, which were separately itemized in the additional 2007 statistics, were either fully or substantially nontaxable:

1. Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
2. Prescriptions;
3. Video Content Downloads;
4. Audio Content Downloads;
5. Prepackaged computer software, including software downloads; and
6. All nonmerchandise receipts.

**FORMAL ISSUE PAPER 11-006**

Therefore, staff recommends that the adjusted U.S. Spending at Electronic Shopping and Mail Order Houses (as adjusted above) be reduced so as to eliminate all six of the fully or substantially nontaxable categories of sales data.

**Use Tax Table Format (subdivision (d)(2))**

Staff recommends adding subdivision (d)(2) as it prescribes the format of the use tax table to be used for 2012 and subsequent years utilizing the methodology set forth in the proposed amendments to the regulation.

**B. Pros of Alternative 1**

- Clarifies that the use tax table is to be used for nonbusiness purchases of individual items each with a sales price of less than \$1,000 and provides assurance to consumers that if they use the table according to the FTB income tax return instructions, then they eliminate exposure to potential assessments of tax due with respect to such purchases.
- Clarifies that the use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE, to help ensure that business purchases are not reported twice.
- Establishes additional AGI ranges with narrower intervals that will improve the precision of the Board's estimated amount of use tax due according to a person's AGI range.
- Adjusts the U.S. Spending at Electronic Shopping and Mail Order Houses data to account for items purchased from websites operated by retailers who do not fall within the electronic and mail order shopping category of business and for purchases of nontaxable items in order to more accurately reflect the percentage of consumers' income spent on taxable purchases during the calendar year.
- Ensures that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years."

**C. Cons of Alternative 1**

None.

**D. Statutory or Regulatory Change for Alternative 1**

No statutory change is required. However, staff's recommendation does require adoption of amendments to Regulation 1685.5.

**E. Operational Impact of Alternative 1**

None.

**F. Administrative Impact of Alternative 1****1. Cost Impact**

The workload associated with publishing the regulation is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

**2. Revenue Impact**

The estimated revenue under Alternative 1 is \$1,000,000 less than the estimated revenue under the current regulation. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 1**

No anticipated impact.

**H. Critical Time Frames of Alternative 1**

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

**VII. Other Alternatives**

**A. Description of Alternative 2**

Do not revise Regulation 1685.5.

**B. Pros of Alternative 2**

The Board would avoid the workload involved with processing and publicizing the revised regulation.

**C. Cons of Alternative 2**

The methodology could overstate a person's estimated use tax liability since it does not take into account the fact that a portion of a person's online purchases may include items that are not subject to tax. Furthermore, the difference in the estimated use tax liabilities between AGI ranges will be such that a nominal increase or decrease in a person's AGI may result in a significantly higher or lower estimated use tax liability.

**D. Statutory or Regulatory Change for Alternative 2**

None.

**E. Operational Impact of Alternative 2**

None.

**F. Administrative Impact of Alternative 2**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 2**

None.

**H. Critical Time Frames of Alternative 2**

None.

**Preparer/Reviewer Information**

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: November 30, 2011



BOARD OF EQUALIZATION

**REVENUE ESTIMATE****FORMAL ISSUE PAPER 11-006****Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table**

---

**Issue**

Whether it is necessary to amend Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB) in the form of a use tax table for calendar year 2012 and subsequent years.

**Alternative 1 - Staff Recommendation**

Staff recommends that the Board approve and authorize publication of proposed amendments to Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*. The proposed amendments:

- Clarify the persons who are eligible to use the use tax table to report their use tax obligations and for what type of purchases – new subdivision (a)(2);
- Explain the “safe harbor” provision (described below) – new subdivision (a)(3);
- Increase the number of adjusted gross income ranges to a total of fifteen (15) – amended subdivision (b)(1);
- Modify the intervals of the established AGI ranges – amended subdivision (b)(1);
- Change the use tax liability factor calculation date from May 1 to June 1 each year – amended subdivision (b)(2);
- Require an adjustment to the U.S. Spending at Electronic Shopping and Mail Order Houses data, published by the U.S. Census Bureau, to estimate taxable purchases of tangible personal property – new subdivision (b)(5); and
- Provide the format of the use tax table for calendar year 2012 and subsequent years – amended subdivision (d)(2).

**Other Alternative Considered**

Do not amend Regulation 1685.5.

## **Background, Methodology, and Assumptions**

### **Alternative 1 – Staff Recommendation**

SB 86 (Statutes of 2011, Chapter 14) requires the Board of Equalization to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and by July 30 of each calendar year make available to the Franchise Tax Board (FTB) such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return. Regulation 1685.5 specifies what this "lookup table" is to consist of. The table currently has eight AGI brackets. For the bottom seven brackets use tax liability estimates are calculated by multiplying the midpoint of each bracket by 0.070 percent. In the top bracket the individual taxpayer's AGI is multiplied by 0.070 percent. The 0.070 percent figure is calculated using U.S. personal income, U.S. remote sales purchases, and the average statewide sales and use tax rate. The 2011 table reflects a blend of the current sales and use tax rate and a temporary sales and use tax rate increase of one percent that expired July 31, 2011.

Alternative 1 proposes the following changes related to revenues for Regulation 1685.5:

- Increase the number of AGI ranges from eight to fifteen. This involves modifying the intervals of the established AGI ranges as follows: increments of \$10,000 up to \$99,999 in AGI and increments of \$25,000 for AGI ranging from \$100,000 to \$199,999.
- Adjust the U.S. Spending at Electronic Shopping and Mail Order Houses data to eliminate the following six fully or substantially nontaxable categories of sales:
  1. Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
  2. Prescriptions;
  3. Video Content Downloads;
  4. Audio Content Downloads;
  5. Prepackaged computer software, including software downloads (we assume that the vast majority of software purchased by consumers in this Census Bureau product category is downloaded, and therefore exempt from taxation); and
  6. All nonmerchandise receipts.
- Add \$10 billion of total taxable and nontaxable purchases from U.S. electronics and appliance stores, building materials and garden equipment and supplies stores, food and beverage stores, health and personal care stores, clothing and clothing accessories stores, sporting goods, hobby, book, and music stores, general merchandise stores, and other miscellaneous stores (Source: U.S. Census Bureau, *2009 Annual Retail Trade Survey*). This would include items purchased from websites operated by retailers who do not fall within the electronic shopping category of business.

We did two sets of calculations to estimate revenues associated with Alternative 1. First, we calculated a lookup table percentage (or use tax liability factor) of 0.068 percent under current law using the data available for the most recent twelve month period (the last three months of 2010 and the first nine months of 2011), and an average statewide sales and use tax rate of 8.11

percent. We then multiplied this percentage by the most recent twelve months of data for California personal income (the last two quarters of 2010 and the first two quarters of 2011) and an assumed participation rate of 1.8 percent of all taxpayers, which resulted in revenues of approximately \$20 million. This is the total revenue estimated for SB 86 under current law, and it includes about \$10 million in revenues received under the law prior to the passage of SB 86.

The second set of calculations was to use the same set of the most current data, but this time include the adjustments proposed in Alternative 1. Under Alternative 1, we calculated a lookup table percentage (or use tax liability factor) of 0.049 percent. We assumed participation would improve from 1.8 percent to 2.3 percent under Alternative 1. There are at least three reasons we believe participation would increase. First, the number of brackets increased from eight to fifteen, making the estimates more precise for greater numbers of taxpayers. One interested party expressed the opinion that participation would improve if the number of brackets were increased. Second, use tax liabilities are lower in each bracket because of adjusting for exempt purchases. Lower liability estimates should result in increased participation. Third, participation may also increase from what we had estimated in March of 2011 because of the greater publicity surrounding AB 155 (which defines retailers engaged in business in this state), related state legislation, and proposed federal legislation on this subject.

The difference between the two revenue estimates (under current law and under Alternative 1) is a revenue loss of about \$1 million.

### **Alternative 2 - Other Alternative – do not amend Regulation 1685.5**

There is nothing in the alternative 2 that would impact sales and use tax revenue.

## **Revenue Summary**

### **Alternative 1 - Staff Recommendation**

We estimate revenues to be about \$1 million less under the changes proposed in Alternative 1.

### **Alternative 2 - Do not amend Regulation 1685.5.**

There is no revenue impact if Regulation 1685.5 is not amended.

## **Qualifying Remarks**

How many personal income tax return filers will use the lookup table for their 2012 use tax liabilities (which determines the assumed participation rate used in the revenue estimate) is highly uncertain. We do not yet have data for numbers of filers and associated revenues using the 2011 lookup table, so it is difficult to make accurate revenues estimates for making proposed changes to the table.

## **Preparation**

This revenue estimate was prepared by Joe Fitz, Research and Statistics Section. This revenue estimate was reviewed by Mr. Robert Ingenito, Manager, Research and Statistics Section. For additional information, please contact Joe Fitz at (916) 323-3802.

Current as of November 30, 2011.

**Regulation 1685.5. *Calculation of Estimated Use Tax – Use Tax Table***

*Reference:* Section 6452.1, Revenue and Taxation Code.

**(a) IN GENERAL.**

(1) ESTIMATED USE TAX AND USE TAX TABLE. The Board of Equalization (BOE) is required to annually calculate the estimated amount of use tax due according to a person's adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB), by July 30 of each year, in the form of a use tax table for inclusion in the instructions to the FTB's returns.

(2) WHO IS ELIGIBLE TO USE BOE USE TAX TABLES.

(A) Consumers may elect to use the use tax tables included in the instructions to their FTB returns to report their estimated use tax liabilities for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand (\$1,000) on their FTB returns. However, eligible consumers may still calculate their actual use tax liabilities using the worksheets in the instructions to their FTB returns and report their actual use tax liabilities on their FTB returns. Consumers are not required to use the use tax tables included in the instructions to their FTB returns.

(B) The use tax table may not be used to estimate use tax liabilities for business purchases, including purchases made by businesses required to hold a seller's permit or to register with the BOE under the Sales and Use Tax Law and report their use tax liabilities directly to the BOE.

(3) SAFE HARBOR. If eligible consumers use the use tax tables included in the instructions to their FTB returns to estimate their use tax liabilities for qualified nonbusiness purchases and correctly report their estimated use tax liabilities for their qualified nonbusiness purchases in accordance with their AGI ranges, then the BOE may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the use tax tables and the consumers' actual use tax liabilities for qualified nonbusiness purchases.

**(b) DEFINITIONS AND DATA SOURCES.**

(1) AGI RANGES. The use tax table shall be separated into fifteen (15)~~eight (8)~~ AGI ranges as follows:

- ~~(A) AGI less than \$20,000;~~
- ~~(B) AGI of \$20,000 to \$39,999;~~
- ~~(C) AGI of \$40,000 to \$59,999;~~
- ~~(D) AGI of \$60,000 to \$79,999;~~
- ~~(E) AGI of \$80,000 to \$99,999;~~
- ~~(F) AGI of \$100,000 to \$149,999;~~
- ~~(G) AGI of \$150,000 to \$199,999;~~

~~(H) AGI more than \$199,999.~~

(A) AGI less than \$10,000;

(B) AGI of \$10,000 to \$19,999;

(C) AGI of \$20,000 to \$29,999;

(D) AGI of \$30,000 to \$39,999;

(E) AGI of \$40,000 to \$49,999;

(F) AGI of \$50,000 to \$59,999;

(G) AGI of \$60,000 to \$69,999;

(H) AGI of \$70,000 to \$79,999;

(I) AGI of \$80,000 to \$89,999;

(J) AGI of \$90,000 to \$99,999;

(K) AGI of \$100,000 to \$124,999;

(L) AGI of \$125,000 to \$149,999;

(M) AGI of \$150,000 to \$174,999;

(N) AGI of \$175,000 to \$199,999;

(O) AGI more than \$199,999

(2) USE TAX LIABILITY FACTOR OR USE TAX TABLE PERCENTAGE. For the 2011 calendar year the use tax liability factor or use tax table percentage shall be 0.070 percent (.0007). On ~~June~~<sup>May</sup> 1, 2012, and each ~~June~~<sup>May</sup> 1 thereafter, the BOE shall calculate the use tax liability factor or use tax table percentage for the current calendar year by multiplying the percentage of income spent on ~~taxable electronic and mail order~~ purchases for the ~~preceding~~<sup>preceding</sup> calendar year by 0.37, multiplying the product by the average state, local, and district sales and use tax rate, and then rounding the result to the nearest thousandth of a percent.

(3) TOTAL PERSONAL INCOME. Total personal income shall be determined by reference to the most current personal income data published by the United States Bureau of Economic Analysis.

(4) TOTAL SPENDING AT ELECTRONIC SHOPPING AND MAIL ORDER HOUSES. Total spending at electronic shopping and mail order houses shall be determined by reference to the most current electronic shopping and mail order house spending data published by the United States Census Bureau.

(5) TOTAL SPENDING ON TAXABLE PURCHASES. Total spending on taxable purchases shall be determined by:

(A) Determining the percentage, rounded to the nearest tenth of a percent, of total spending at electronic shopping and mail order houses that are not included in the following



categories of items, by reference to the most current retail trade product lines statistics by kind of business data published by the United States Census Bureau:

- (i) Groceries and other foods for human consumption off premises, excluding bottled, canned, or packaged soft drinks;
- (ii) Prescriptions;
- (iii) Video Content Downloads;
- (iv) Audio Content Downloads;
- (v) Prepackaged computer software, including software downloads; and
- (vi) All nonmerchandise receipts.

(B) Adding ten billion dollars (\$10,000,000,000) to the total spending at electronic shopping and mail order houses to account for spending that is not included in the spending data published by the United States Census Bureau; and

(C) Multiplying the sum calculated in (B) by the percentage of total spending at electronic shopping and mail order houses that are not included in the categories of items listed in (A) above so that the result does not include spending on nontaxable purchases, and then rounding the result to the nearest tenth of a percent.

~~(6)(5) PERCENTAGE OF INCOME SPENT ON TAXABLE ELECTRONIC AND MAIL ORDER PURCHASES.~~ The percentage of income spent on ~~taxable electronic and mail order purchases~~ during a calendar year shall be calculated by dividing the total spending on ~~taxable purchases at electronic shopping and mail order houses~~ for that year by the total personal income for that year, multiplying the result by 100, and rounding the result to the nearest tenth of a percent.

~~(7)(6) AVERAGE STATE, LOCAL, AND DISTRICT SALES AND USE TAX RATE.~~ The average state, local, and district sales and use tax rate for a calendar year shall be the total of:

(A) The rates of the statewide sales and use taxes imposed under section 35 of article XIII of the California Constitution and the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) in effect on January 1 of that year;

(B) The statewide rate of local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code, § 7200 et seq.) in effect on January 1 of that year; and

(C) The weighted average rate of the district taxes imposed under the Transactions and Use Tax Law (Rev. & Tax Code, § 7251 et seq.) in effect in the various jurisdictions throughout the state on January 1 of that year after taking into account the proportion of the total statewide taxable transactions (by dollar) reported for each jurisdiction during the fourth quarter of the calendar year that is two years prior to the calendar year for which the calculation is made. For example, the total reported taxable transactions (by dollar) for the fourth quarter of 2010 shall be used to determine the weighted average rate of the district tax rates in effect on January 1, 2012, to calculate the weighted average rate of district taxes for calendar year 2012.

**(c) CALCULATION OF THE ESTIMATED USE TAX LIABILITY.**

(1) The estimated use tax liability for the AGI range described in subdivision (b)(1)(A) shall be determined by multiplying ~~\$5,000~~~~\$10,000~~ by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(2) The estimated use tax liability for the AGI ranges described in subdivision (b)(1)(B) through ~~(N)(G)~~ shall be determined by multiplying the midpoint of each AGI range by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

(3) The estimated use tax liability for the AGI range described in subdivision (b)(1)(~~OH~~) shall be determined by multiplying each range members actual AGI by the use tax liability factor or use tax table percentage and then rounding the result to the nearest whole dollar.

**(d) USE TAX TABLE FORMAT.**

(1) The use tax table for calendar year 2011 shall provide as follows:

<b>Adjusted Gross Income (AGI) Range</b>	<b>Use Tax Liability</b>
Less Than \$20,000	\$7
\$20,000 to \$39,999	\$21
\$40,000 to \$59,999	\$35
\$60,000 to \$79,999	\$49
\$80,000 to \$99,999	\$63
\$100,000 to \$149,999	\$88
\$150,000 to \$199,999	\$123
More than \$199,999 -Multiply AGI by 0.070% (.0007)	

(2) The use tax tables for calendar year 2012 and subsequent years shall utilize the same format as follows:~~the use tax table for calendar year 2011.~~

<u>Adjusted Gross Income</u>			<u>Use Tax Liability</u>
<u>(AGI) Range</u>			
<u>Less Than \$10,000</u>			<u>\$</u>
<u>\$10,000</u>	<u>to</u>	<u>\$19,999</u>	<u>\$</u>
<u>\$20,000</u>	<u>to</u>	<u>\$29,999</u>	<u>\$</u>
<u>\$30,000</u>	<u>to</u>	<u>\$39,999</u>	<u>\$</u>
<u>\$40,000</u>	<u>to</u>	<u>\$49,999</u>	<u>\$</u>
<u>\$50,000</u>	<u>to</u>	<u>\$59,999</u>	<u>\$</u>
<u>\$60,000</u>	<u>to</u>	<u>\$69,999</u>	<u>\$</u>
<u>\$70,000</u>	<u>to</u>	<u>\$79,999</u>	<u>\$</u>
<u>\$80,000</u>	<u>to</u>	<u>\$89,999</u>	<u>\$</u>
<u>\$90,000</u>	<u>to</u>	<u>\$99,999</u>	<u>\$</u>
<u>\$100,000</u>	<u>to</u>	<u>\$124,999</u>	<u>\$</u>
<u>\$125,000</u>	<u>to</u>	<u>\$149,000</u>	<u>\$</u>
<u>\$150,000</u>	<u>to</u>	<u>\$174,999</u>	<u>\$</u>
<u>\$175,000</u>	<u>to</u>	<u>\$199,999</u>	<u>\$</u>
<u>More than \$199,999 -Multiply AGI by</u>			<u>% (.000 )</u>

**From:** Williams, Lee  
**Sent:** Thursday, October 27, 2011 3:17 PM  
**To:** Wilke, Robert  
**Subject:** Reg. 1685.5 Comments

Robert  
As per the 2<sup>nd</sup> Discussion Paper, my comments follow.

**Comment 1:**

For the benefit of taxpayers who do not regularly deal with use tax matters, there should be a general explanation in the reg. (and the instructions to the FTB) explaining the difference between a line item and a transaction total and that the exclusion from the table, as per (a)(2), is based on the line item amount, not the transaction total.

Examples should also be provided, either by reference or as part of the general explanation, in the reg. (and the instructions to the FTB). As has been previously suggested for other regulations, the provided examples should illustrate both included and excluded items. Some possible examples are presented below:

For all examples:

<u>Line Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Extension</u>
<b>Transaction A:</b>				
	Automobile Tires	4	\$300.00	\$1,200.00
	Automobile Wheels	4	\$400.00	<u>\$1,600.00</u>
	Total			<u>\$2,800.00</u>

**Commentary:**

Entire amount includable in table estimate as no single item has a cost of \$1,000 or more.

**Transaction B:**

	Desktop Computer	1	\$900.00	\$ 900.00
	Monitor	1	\$500.00	\$ 500.00
	Surge Protector	1	\$ 30.00	\$ 30.00
	Installed Software	1	\$300.00	<u>\$ 300.00</u>
	Total			<u>\$1,730.00</u>

**Commentary:**

Entire amount includable in table estimate as no single item has a cost of \$1,000 or more.

**Transaction C:**

	High Definition TV	1	\$1,100.00	\$1,100.00
	Surge Protector	1	\$ 30.00	\$ 30.00
	Cable Package	1	\$ 50.00	<u>\$ 50.00</u>
	Total			<u>\$1,180.00</u>

**Commentary:**

\$80 includable in table estimate.

\$1,100 excluded from the table estimate.

**Comment 2:**

An adjustment should be made to the calculation as per Handout 1 (aka Page 18) and the related section of the regulation to attempt to estimate the portion of transactions that involve individual items of \$1000 or more.

I understand the current rationale for not making any adjustment to be that retailers in the top 500 of which have average transaction sizes of \$1,000 or more were less than .5% of the total dollars. In my opinion, this logic ignores the impact of a small percentage of transactions for the other 99.5%+ of transactions. Even a 1.0% rate for the other sellers would result in a .995% overall percentage of transactions, which would be almost twice the overall portion of large transactions from the identified retailers, .5%, even assuming all the transactions for the identified retailers involved items selling for \$1000 or more. Using the various assumptions described below, the portion of the overall rate for the 99.5% of sellers was about six times the portion of the rate for the large transaction size retailers identified.

I have attempted an estimate of the portion of the retail sales as described at I.b)1) and I.b)2) [\$289 billion and \$10 billion] related to the sales of individual items selling for \$1,000 or more in two parts. I would be the first to suggest the estimate could be improved with more empirical data. It is also possible there are other, better estimating methods. However, I am unaware of any other estimating method being presented.

First, I assumed two large national retailers would be roughly comparable to the 99.5% of retailers with respect to the portion of sales of items selling for \$1000 or more. These retailers were selected primarily because empirical transaction data was available on a timely basis. In my opinion, there is ample reason to believe transaction results for these retailers are comparable to internet and mail order sellers since both retailers operate web sites in addition to the physical stores and effectively compete with a large range of the entire universe of sellers. The summary audit transaction test information info. is described below:

<u>Description</u>	<u>Total of \$ Amounts</u>	<u>Total of Line Items</u>	<u>% of \$ with Line Items &gt; than \$1000</u>
Retailer A	\$ 6,532,670	992,114	5.587655%
Retailer B	\$118,357,504	29,984,228	.833120%

The average sales as reported in the public annual reports of the retailers for the five fiscal years 2011 to 2007 were used to provide weightings for the above percentage estimates. The five year financial statement data indicates the weightings should be about 15.6% and 84.4% for Retailers A and B, respectively. These weightings were applied to the 99.5% of retailers previously described to yield revised overall weightings of 15.522% and 83.978% for Retailers A and B, respectively.

Second, for the .5% of sales related to retailers with average transaction sizes of \$1000 or more, I assumed half of the transactions would relate to individual items of \$1000 or more. This was merely a convenient estimate and could hopefully be refined.

The combined effect is summarized below:

<u>Description</u>	<u>Weighting</u>	<u>% for \$1000+</u>	<u>Product</u>
Retailer A	15.522%	5.587655%	.867316%
Retailer B	83.978%	.833120%	.699638%
Subtotal	99.500%		1.566953%
Large \$ retailers	.500%	50.000000%	.250000%
Total	<u>100.000%</u>		<u>1.816953%</u>

Thus, on a rounded basis, I would recommend the Handout 1 estimate of b) Total Spending on Taxable Purchases be reduced by 1.817% to \$203 Billion. Although this reduction is not sufficient to change the end result of the example as shown in Handout 1, I am of the opinion the estimate should still include some adjustment in the interest of accuracy and eliminating perceived bias in the estimate. I would also note that it would not take a very large change in the percentage estimate for there to be an actual effect.

I would further recommend that before any table is issued for the 2012 tax year, some further work be done on improving the estimate of the portion of transactions involving items selling for \$1000 or more. It would not seem terribly difficult to obtain transaction data for additional retailers to improve the likelihood the estimate is broadly based. After all, a substantial portion of the SUTD's activities are related to auditing transaction data so it would seem obtaining empirical transaction data for a number of retailers would not be beyond our capabilities.

Although I am of the opinion many other retailers will have results more similar to Retailer A than Retailer B, any additional empirical evidence would be welcome.

### **Comment 3:**

An adjustment should be made to the regulation and any related FTB instructions to account for use tax already reported under other programs. As was noted at the interested parties meeting, it is possible for taxpayers to be involved with multiple business and entities. Not making any adjustment will cause over-estimates that will be primarily borne by individuals actively involved in business enterprises, arguably the last group that should be burdened with duplicative tax assessments.

As was briefly discussed, an individual may operate a sole proprietorship (reported on a Schedule C) service business and the business might have receipts in excess of \$100,000 such that the "qualified purchaser" program applies and tax is paid to the BOE as per that program. The individual might also have another sole proprietorship (reported on another Schedule C) that is involved with the sale of TPP and has a permit and reports use tax via regular return filing. The individual might also have another sole proprietorship (reported on a third Schedule C) that does not require a permit and does not fall within the "qualified purchaser" program.

A similar range of possibilities exists for partnerships and trusts, S-corp.'s, LLC's and similar "pass-thru" entities (generally reported on Schedule E based on K-1 information returns from the entities) and for farming enterprises (generally reported on Schedule F.)

Finally, an individual may also be filing a joint return with income from similar sources or perhaps income solely from salaries or other sources to which no other tax reporting program might apply.

Under the current scheme, it would appear that there is no recognition of use tax paid under any other program and thus the use tax estimate is overstated.

As the commentary to date indicates a strong desire for simplicity, my first suggestion is to have the instructions and regulation exclude entities from which tax is already reported from the gross income calculations. As the filers have to segregate information on an entity basis already, this will not be a terribly difficult computational task and would only require some simple addition and subtraction.

Alternatively, a credit to the table estimate for use tax paid under other programs would also serve to minimize any duplication. However, it is not clear this is a simple alternative. The "Qualified purchaser" program as per RTC §6225 is strictly a calendar year program, creating some moderate to severe timing differences for fiscal year filers. Similarly, many fiscal year filers will have moderate timing issues as permit holders generally file on periods ending on calendar quarters, regardless of when their fiscal year ends. Even for calendar year filers this will create additional documents required to accurately prepare an income tax return.

**Lee Williams**

**Example Calculation of the Use Tax Liability Factor**  
**Based on Staff's Recommended Amendments to Regulation 1685.5<sup>1</sup>**

The following hypothetical example illustrates how the use tax liability factor prescribed by staff's recommended amendments to Regulation 1685.5 would be calculated using the data noted below:

I. Determine the percentage of income spent on taxable purchases:

a) U.S. Personal Income (Billions of Dollars) <sup>2</sup>	\$12,718
b) Total Spending on Taxable Purchases (Billions of Dollars) (3*4)	\$ 207
1) Total Spending at Electronic Shopping and Mail Order Houses (ESMOH) (Billions of Dollars) <sup>3</sup>	\$ 289
2) Adding \$10 billion to account for spending at companies without website subsidiaries	\$ 10
3) Total Spending at ESMOH and companies without website subsidiaries	\$ 299
4) Percentage of total spending at ESMOH not included in the nontaxable or substantially nontaxable categories <sup>4</sup>	69.2%
c) Percent of Income Spent on Taxable Purchases (b/a) (rounded to the nearest tenth of a percent)	1.6%
II. Multiply the result from Step I(c) by .37 <sup>5</sup> : (c*.37)	.00592

III. Multiply the product from Step II by the weighted average state, local, district sales and use tax rate and round to the nearest thousandth of a percent:

Use Tax Liability Factor (Step II*8.11% <sup>6</sup> )	.048
--	------

---

<sup>1</sup> The actual numbers to be used in calculating the use tax liability factor or use tax table percentage for the Board's 2012 use tax table will be calculated on June 1, 2012, using the most current income and spending data available on that date and the average state, local, and district sales and use tax rate in effect on January 1, 2012.

<sup>2</sup> U.S. Bureau of Economic Analysis. FY 10/11.

<sup>3</sup> U.S. Census Bureau. Most recent twelve (12) months, ending July 2011.

<sup>4</sup> Percentage calculated based on *Sector 44: Retail Trade: Subject Series: Product Lines: Product Lines Statistics by Kind of Business for the United States: 2007*, data for 2007 NAICS code 4541, *Electronic Shopping and Mail Order Houses*.

<sup>5</sup> Estimated percentage of California consumers total purchases of tangible personal property for use in California that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers.

<sup>6</sup> Hypothetical rate used for the purpose of this example calculation.



**Table 5. U.S. Retail Trade Sales<sup>1</sup> - Total and E-commerce: 2009 and 2008**

[Estimates are based on data from the 2009 Annual Retail Trade Survey. Sales estimates are shown in millions of dollars, consequently industry group estimates may not be additive. Estimated measures of sampling variability for these estimates are provided in Table 5A]

NAICS Code	Description	Value of Sales						Y/Y Percent Change		E-commerce as Percent of Total Sales		Percent Distribution of E-commerce Sales
		2009		2008		Revised E-commerce	E-commerce Sales	Total Sales	2009	2008		
		Total Sales	E-commerce	Total Sales	Revised							
	<b>Total Retail Trade</b>	<b>3,638,471</b>	<b>145,214</b>	<b>3,952,933</b>	<b>142,281</b>	<b>-8.0</b>	<b>2.1</b>	<b>4.0</b>	<b>3.6</b>	<b>100.0</b>		
441	Motor vehicles and parts dealers	676,801	17,201	788,688	19,337	-14.2	-11.0	2.5	2.5	11.8		
442	Furniture and home furnishings stores	86,657	(S)	99,913	(S)	-13.3	(S)	(S)	(S)	(S)		
443	Electronics and appliance stores	98,384	1,140	108,869	1,120	-9.6	1.8	1.2	1.0	0.8		
444	Building materials and garden equipment and supplies stores	268,206	477	305,085	575	-12.1	-17.0	0.2	0.2	0.3		
445	Food and beverage stores	570,581	883	571,245	866	-0.1	2.0	0.2	0.2	0.6		
446	Health and personal care stores	253,243	177	246,976	160	2.5	10.6	0.1	0.1	0.1		
447	Gasoline stations	388,515	(ZZ)	502,469	(ZZ)	-22.7	(Z)	(Z)	(Z)	(Z)		
448	Clothing and clothing accessories stores	204,866	2,965	216,087	2,547	-5.2	16.4	1.4	1.2	2.0		
451	Sporting goods, hobby, book, and music stores	81,373	1,865	84,323	1,803	-3.5	3.4	2.3	2.1	1.3		
452	General merchandise stores	592,009	220	596,541	165	-0.8	33.3	(Z)	(Z)	0.2		
453	Miscellaneous store retailers	105,366	2,360	113,170	2,347	-6.9	0.6	2.2	2.1	1.6		
454	Nonstore retailers	312,470	116,543	319,567	112,035	-2.2	4.0	37.3	35.1	80.3		
45411	Electronic shopping and mail-order houses	234,667	112,791	228,545	108,404	2.7	4.0	48.1	47.4	77.7		

(S) Estimate does not meet publication standards because of high sampling variability (coefficient of variation is greater than 30%) or poor response quality (total quantity response rate is less than 50%). For a description of publication standards and the total quantity response rate, see <<http://www.census.gov/quality/standards/standardf1.html>>.

(Z) Estimate is less than 0.05%.

(ZZ) Estimate is less than \$500,000.

Note: Retail total and other subsector totals may include data for kinds of business not shown. Estimates have not been adjusted for price changes. For additional information on confidentiality protection, sampling error, nonsampling error, sample design, and definitions, see <[http://www.census.gov/retail/arts/how\\_surveys\\_are\\_collected.html](http://www.census.gov/retail/arts/how_surveys_are_collected.html)>.

<sup>1</sup> Estimates include data for businesses with or without paid employees and are subject to revision.

Source: U.S. Census Bureau, 2009 Annual Retail Trade Survey

Total of enclosed items is \$10.087 billion. Column represents e-commerce sales from companies that make a portion of their sales from websites, but have no website subsidiaries.

Staff recommends amending Regulation 1685.5 subdivision (b)(5) to require \$10 billion be added to the U.S. Spending at Electronic and Mail-order Houses data.

Sector 44: Retail Trade: Subject Series: Product Lines:

Product Lines Statistics by Kind of Business for the United States: 2007<sup>1</sup>

Data for 2007 NAICS code 4541, "Electronic Shopping and Mail Order Houses"<sup>2</sup>

Products and			Sales (\$1,000)	% of Total <sup>3</sup>
Ref	Services Code	Meaning of Products and Services Code		
1	20000	Industry total	220,656,247	100
2	20100	Groceries & other foods for human consumption off the premises	4,136,507	1.9
3	20108	Bottled, canned, or packaged soft drinks	153,302	0.1
4	20113	All other foods	3,982,631	1.8
5	20140	Packaged liquor, wine, & beer	1,485,762	0.7
6	20150	Cigars, etc & smokers' access, excl sls from vending op by others	656,518	0.3
7	20160	Drugs, health aids, beauty aids, including cosmetics	68,613,999	31.1
8	20161	Prescriptions	57,854,753	26.2
9	20162	Nonprescription medicines	319,382	0.1
10	20163	Vitamins, minerals, & other dietary supplements	5,210,236	2.4
11	20164	Health aids, incl first-aid prod; foot prod; ortho equip; etc	2,162,956	1
12	20165	Cosmetics, incl face cream, make-up, perfumes & colognes etc	2,504,691	1.1
13	20166	Oth hygiene needs, incl deodorants; hair & shaving products, etc	518,101	0.2
14	20167	Hearing aids & supplies	43,878	0
15	20180	Soaps, detergents, & household cleaners	236,132	0.1
16	20190	Paper & related prod, incl paper towels, toilet tissue, wraps,etc	162,160	0.1
17	20200	Men's wear, including accessories	3,591,943	1.6
18	20220	Women's, juniors', and misses' wear, including accessories	10,933,808	5
19	20240	Children's wear, incl boys', girls', infants' & toddlers'	1,461,872	0.7
20	20260	Footwear, including accessories	3,867,183	1.8
21	20270	Sewing, knitting materials & supplies, needlework goods, etc	368,594	0.2
22	20280	Curtains, draperies, blinds, slipcovers, bed & table coverings	2,191,406	1
23	20300	Major household appliances	1,373,319	0.6
24	20310	Small electric appliances & personal care appliances	1,456,321	0.7
25	20320	TVs, video recorders, video cameras, video tapes, DVDs, etc	5,516,508	2.5
26	20321	Televisions & related parts & accessories	1,913,468	0.9
27	20324	Video recorders, cameras, tapes&electr game/DVD comb dev	3,312,360	1.5
28	20325	Video content downloads	290,680	0.1
29	20330	Audio equip, musical instr, radios, stereos, CDs, records, etc	5,698,967	2.6
30	20331	Audio equipment, components, parts & accessories	2,234,015	1
31	20335	Compact discs, records, tapes, & audio books	2,108,500	1
32	20337	Musical instruments, sheet music, & related items	1,253,090	0.6
33	20338	Audio content downloads	103,362	0
34	20340	Furniture, sleep equipment & outdoor/patio furniture	5,394,234	2.4
35	20360	Flooring & floor coverings	376,963	0.2
36	20370	Computer hardware, software, & supplies	31,953,123	14.5
37	20375	Computer & peripheral equipment	28,161,622	12.8
38	20376	Prepackaged computer software, including software downloads	3,791,501	1.7
39	20380	Kitchenware & home furnishings	5,950,219	2.7
40	20400	Jewelry, incl watches, watch attach, novelty jewelry, etc	7,145,791	3.2
41	20420	Books	6,927,446	3.1
42	20440	Photographic equipment & supplies	670,101	0.3

43	20460	Toys, hobby goods, & games	5,098,897	2.3
44	20461	Toys, including wheel goods	3,043,694	1.4
45	20462	Games, including video & electronic games	940,761	0.4
46	20463	Hobby goods	1,078,445	0.5
47	20490	Optical goods, incl eyeglasses, contact lenses, sunglasses, etc	574,004	0.3
48	20500	Sporting goods	5,808,362	2.6
49	20519	Boats, motors, parts & accessories	388,404	0.2
50	20522	All other sporting goods	5,419,958	2.5
51	20600	Hardware, tools, & plumbing & electrical supplies	2,253,622	1
52	20620	Lawn, garden, & farm equipment & supplies	2,348,816	1.1
53	20640	Dimensional lumber & oth bldg/structural materials & supplies	219,818	0.1
54	20670	Paint & sundries	15,194	0
55	20690	Wallpaper & other flexible wallcoverings	19,828	0
56	20700	Cars, trucks, motorcycles & other powered transportation vehicles	1,349,807	0.6
57	20730	Automotive lubricants, including oil, greases, etc	2,325	0
58	20740	Automotive tires, tubes, batteries, parts, accessories	5,182,879	2.3
59	20800	Pets, pet foods, & pet supplies	2,051,717	0.9
60	20850	All other merchandise	22,211,579	10.1
61	20851	Stationery products	2,874,291	1.3
62	20852	Office paper, incl computer, copier, fax & typewriter paper	3,660,647	1.7
63	20853	Office & school supplies	5,019,615	2.3
64	20854	Office equipment	1,672,327	0.8
65	20855	Greeting cards	202,917	0.1
66	20856	Magazines & newspapers	320,456	0.1
67	20859	Luggage & leather goods	562,971	0.3
68	20861	Antiques, items over 100 years old	446,121	0.2
69	20862	Collectibles, incl items which are old, but less than 100 yrs old	2,708,969	1.2
70	20863	Art goods, including original pictures & sculptures	408,281	0.2
71	20877	Souvenirs & novelty items	1,513,246	0.7
72	20879	Artificial/silk flowers, plants, & trees	41,486	0
73	20883	All other merchandise	2,780,251	1.3
74	29810	All other merchandise	1,474,439	0.7
75	29900	All nonmerchandise receipts	1,851,025	0.8
76	29967	All other nonmerchandise receipts	1,818,092	0.8
77				
78		Industry Total (Line 1)	220,656,247	
79		Total Nontaxable Sales (L2-L3+L8+L28+L33+L38+L75)	67,874,526	
80		Total Taxable Sales (L1-L79)	152,781,721	
81				
82		<b>Taxable Percentage (L80/L1)</b>	<b>69.2%</b>	
		rounded to nearest tenth of a percent		

1/ Source: U.S. Census Bureau, 2007 Economic Census. Release Date: 11/16/10.

2/ These data are final; they supersede data released in earlier data files. Includes only establishments of firms with payroll. Data based on the 2007 Economic Census. For information on confidentiality protection, sampling error, nonsampling error, and definitions, see Survey Methodology [pdf].

3/ Product line sales/receipts/revenue as a percent of total sales/receipts/revenue.